

REMARKS:

The Office action mailed February 23, 2006 has been received and carefully considered. A request for continued examination is filed herewith. Reconsideration of the application as amended hereby is respectfully requested.

Independent Claims 10, 30 and 32 were rejected as anticipated by Ray. The invention of the present application has a very important distinction over the device shown in Fig. 5 of Ray. Applicant has found that it is important to support the region of the vertebrae that is in close proximity to the front or anterior side of the vertebrae. This is because this region of the vertebrae is constructed of harder bone, whereas supporting the vertebrae by the softer bone closer to the center of the vertebrae can lead to subsidence of the bone about the implant. Subsidence onto the implant results in the anterior of adjacent vertebrae becoming closer spaced than is desirable, whereas the rear is supported by bony structure. In order to resolve this problem, applicant developed the winged end cap of the present invention. In applicant's end cap, the wings extend out along the boney endplate near the edge of the vertebrae all the way to the sides and have a continuous curvature that is shaped to conform to the curvature of the vertebrae. This structure is shown providing support to the entire anterior edge of the vertebrae in Figs. 14 and 16. The language describing

this structure has been further refined in Claims 10, 30 and 32 and is urged to distinguish over Ray.

In particular, while the Ray reference shows an end cap with tangs 60 in Fig. 3, these tangs abruptly bend posteriorly at a ninety degree angle so that the tangs extend in close proximity to and along the fusion cage 24. This results in the tangs being mainly located in supporting association with the softer bone nearer the center of the vertebrae rather than the bone along the entire anterior edge of the vertebrae. Therefore, it is urged that Ray not only fails to anticipate applicant's invention, but actually teaches against it.

There is a statement in the action with respect to prior Claim 31 indicating that "features of an apparatus may be recited either structurally or functionally" and then implies that applicant's features are solely functional. While the function of applicant's apparatus is to support the anterior of the vertebrae against subsidence, it is urged that the description of the wing portions, including the reference to size and shape, clearly all have to do with structure and not function. Therefore, these claims, as well as those that depend from them are urged to clearly differentiate over the art of record.

Claim 28 was also rejected as anticipated by Ray. It is urged that nothing in Ray suggests or teaches supporting the vertebrae as called for in Claim 28. In particular, nothing in

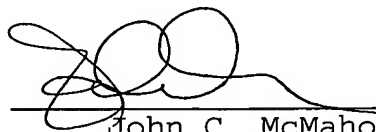
Ray teaches supporting the entire anterior edges of the vertebrae all the way to the lateral sides thereof.

Various claims were rejected under the doctrine of double patenting based upon a copending application of the present inventor that resulted in patent 6,926,737 and copending application 10/666,074 of applicant. While the inventions claimed in the cited patent and application are quite distinct from those claimed herein, a terminal disclaimer is submitted herewith which is urged to resolve all issues regarding double patenting. Consequently, withdrawal of all rejections regarding double patenting is respectfully requested.

In summary, it is urged that all pending claims are allowable and notice to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned by telephone, if prosecution of this application can be expedited thereby.

Respectfully Submitted,



John C. McMahon
Reg. No. 29,415
Attorney

JCM:lm
PO Box 30069
Kansas City, Missouri
64112
Phone: (816) 531-3470

Roger P. Jackson

Serial No. 10/666,589

I hereby certify that this
correspondence is being deposited
with the United States Postal
Service as first class mail in an
envelope addressed to:

Mail Stop RCE
Commissioner For Patents,
P.O. Box 1450,
Alexandria, VA 22313-1450 on
May 23, 2006.

Roger P. Jackson
(Applicant)

By



May 23, 2006

(Date of Signature)